

**ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE**

March 23, 2022

1:34 p.m.

MEMBERS PRESENT

Senator Roger Holland, Chair
Senator Mike Shower, Vice Chair
Senator Shelley Hughes
Senator Robert Myers
Senator Jesse Kiehl

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 34

"An Act providing for the establishment of public schools through state-tribal compacts."

- HEARD & HELD

SENATE BILL NO. 124

"An Act relating to admission to and detention at a subacute mental health facility; establishing a definition for 'subacute mental health facility'; establishing a definition for 'crisis residential center'; relating to the definitions for 'crisis stabilization center'; relating to the administration of psychotropic medication in a crisis situation; relating to licensed facilities; and providing for an effective date."

- BILL HEARING CANCELED

SENATE BILL NO. 229

"An Act relating to admission to and detention at a subacute mental health facility; establishing a definition for 'subacute mental health facility'; establishing a definition for 'crisis residential center'; relating to the definitions for 'crisis stabilization center'; relating to the administration of psychotropic medication in a crisis situation; relating to licensed facilities; and providing for an effective date."

- BILL HEARING CANCELED

PREVIOUS COMMITTEE ACTION

BILL: SB 34

SHORT TITLE: STATE-TRIBAL EDUCATION COMPACT SCHOOLS

SPONSOR(S): SENATOR(S) STEVENS

01/25/21	(S)	PREFILE RELEASED 1/8/21
01/25/21	(S)	READ THE FIRST TIME - REFERRALS
01/25/21	(S)	EDC, JUD
04/21/21	(S)	EDC AT 9:00 AM BUTROVICH 205
04/21/21	(S)	Heard & Held
04/21/21	(S)	MINUTE(EDC)
04/23/21	(S)	EDC AT 9:00 AM BUTROVICH 205
04/23/21	(S)	<Bill Hearing Canceled>
04/28/21	(S)	EDC AT 9:00 AM BUTROVICH 205
04/28/21	(S)	Heard & Held
04/28/21	(S)	MINUTE(EDC)
02/11/22	(S)	EDC AT 9:00 AM BUTROVICH 205
02/11/22	(S)	Heard & Held
02/11/22	(S)	MINUTE(EDC)
02/16/22	(S)	EDC AT 9:00 AM BUTROVICH 205
02/16/22	(S)	Heard & Held
02/16/22	(S)	MINUTE(EDC)
02/23/22	(S)	EDC AT 9:00 AM BUTROVICH 205
02/23/22	(S)	Heard & Held
02/23/22	(S)	MINUTE(EDC)
03/03/22	(S)	EDC AT 10:00 AM BUTROVICH 205
03/03/22	(S)	Heard & Held
03/03/22	(S)	MINUTE(EDC)
03/11/22	(S)	EDC AT 9:00 AM BUTROVICH 205
03/11/22	(S)	<Above Item Removed from Agenda>
03/11/22	(S)	MINUTE(EDC)
03/17/22	(S)	EDC AT 10:00 AM BUTROVICH 205
03/17/22	(S)	Moved CSSB 34(EDC) Out of Committee
03/17/22	(S)	MINUTE(EDC)
03/18/22	(S)	EDC RPT CS 4DP NEW TITLE
03/18/22	(S)	DP: HOLLAND, MICCICHE, STEVENS, BEGICH
03/23/22	(S)	JUD AT 1:30 PM BUTROVICH 205

WITNESS REGISTER

SENATOR GARY STEVENS
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Sponsor of SB 34.

TIM LAMKIN, Staff
Senator Gary Stevens
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Provided a summary and sectional analysis of SB 34, Version G on behalf of the sponsor.

JULIE KITKA, President
Alaska Federation of Natives
Anchorage, Alaska

POSITION STATEMENT: Provided invited testimony in support of SB 34.

RICK AGNEW, Legal Counsel
Alaska Federation of Natives
Federal Way, Washington

POSITION STATEMENT: Answered legal questions on state-tribal education compact schools during the hearing on SB 34.

JOEL ISAAK, Tribal Liaison Project Coordinator
Department of Education and Early Development (DEED)
Juneau, Alaska

POSITION STATEMENT: Provided invited testimony in support of SB 34 and answered questions on the bill.

ACTION NARRATIVE

[1:34:59 PM](#)

CHAIR ROGER HOLLAND called the Senate Judiciary Standing Committee meeting to order at 1:34 p.m. Senators Myers, Hughes, Kiehl, and Chair Holland were present at the call to order. Senator Shower arrived as the meeting was in progress.

SB 34-STATE-TRIBAL EDUCATION COMPACT SCHOOLS

[1:35:38 PM](#)

CHAIR HOLLAND announced the consideration of SENATE BILL NO. 34 "An Act providing for the establishment of public schools through state-tribal compacts."

[CSSB 34(EDC) was before the committee.]

[1:36:04 PM](#)

SENATOR GARY STEVENS, Alaska State Legislature, Juneau, Alaska, speaking as sponsor of SB 34, summarized the sponsor statement.

[Original punctuation provided.]

State-Tribal Education Compacting Senate Bill 34 proposes an opportunity for Alaska to enhance educational outcomes and student experiences by providing high quality, locally-driven education via the use of State-Tribal compact schools.

Alaska is an incredibly culturally and linguistically diverse state, with at least eleven distinct Alaska Native cultures and twenty State-recognized official Alaska Native languages. As a state, we have much to gain from providing a pathway for our education system to reflect this wealth of diversity and possibility.

Passage of this legislation will provide Tribes the opportunity to voluntarily apply to establish a State-Tribal compact school. State-tribal compact schools will affirm the State's commitment to educating Alaska's children, and honor a government-to-government relationship with Tribes by partnering with them to improve educational outcomes. Partnering with tribes to deliver education will reestablish a sense of ownership and pride in the public educational system, and has the potential to substantially improve educational outcomes.

Alaska, like many states, has a staunch policy of local control as regards education policy and budget decisions. State-Tribal compact schools will provide another avenue for addressing existing challenges and ensuring that children are prepared to be healthy, productive community members and to be positioned for success.

Thank you for your consideration of this important piece of legislation.

1:35:40 PM

SENATOR STEVENS explained that the bill initially would have implemented state-tribal compacted schools. However, Version G is a scaled-back version. He explained tribal compacting as a process by which the state and a tribal entity reach an

agreement to formally recognize the tribe's authority to operate and oversee a K-12 school to enhance educational outcomes. This bill would allow state and tribal entities to set up a negotiation process to allow tribes to control their own schools. He characterized it as a direct relationship with the state that would allow tribes to access funds for educational enrichment. He noted that the Alaska Federation of Natives (AFN) was very supportive and may be able to provide some funding. He envisioned this as a starting point that would allow the Board of Education and Early Development and federally recognized tribes some time to organize a model demonstration project to ensure that it works before returning to the legislature with legislation to meet those goals.

[1:37:58 PM](#)

TIM LAMKIN, Staff, Senator Gary Stevens, Alaska State Legislature, Juneau, Alaska, provided a brief summary and a sectional analysis for SB 34, Version G, on behalf of the sponsor. He reiterated that Version G was a scaled-back version of SB 34 because the sponsor became aware of the complexities regarding tribal compacting, yet he wanted to begin the tribal compacting process. First, SB 34, Version G, would allow recognized tribes to negotiate with the Board of Education and Early Development. Second, it would request that the legislature introduce specific legislation on the model for compacting. Finally, it would set a timeline for introducing legislation to implement state-tribal compacting. He turned to the sectional analysis for SB 34.

[1:39:06 PM](#)

MR. LAMKIN stated that Section 1, subsection (a) would direct the Board of Education and Early Development to negotiate a demonstration state-tribal compact. It would include a single compact for a few schools for five years. Subsection (b) would direct the governing body of federally recognized tribes to negotiate by the end of this calendar year. Subsection (c) would direct the board to initiate the negotiations by March 2023. Subsection (d) would require that legislation be filed no later than January 2024 addressing or proposing that compact. Subsection (e) identifies the board as the Board of Education and Early Development.

[1:40:06 PM](#)

MR. LAMKIN stated that Section 2 amends the uncodified law to execute the demonstration state-tribal compact in the forthcoming legislation for the compacting model that would take effect by 2029.

MR. LAMKIN noted that Section 3 would provide an immediate effective date.

SENATOR STEVENS commented that this bill results from the Alaska Educational Challenge. He explained that several years ago, the commissioner of the Department of Education and Early Development called 100 people together to work on the most immediate needs for education in Alaska. He related that working to develop tribal schools was fourth on the list.

1:41:00 PM

CHAIR HOLLAND said he previously heard the bill in the Senate Education Committee. The committee identified complexities, so addressing the state-tribal education compact issues will take time.

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SENATOR KIEHL stated that this was a promising model for a demonstration project. He asked about the vision for tribal schools and if they would serve enrolled members of tribes as students or if they would serve all Alaskans interested in attending.

SENATOR STEVENS responded that small village schools would like to cover Native cultural history and language while still preparing students to live and compete in the world. He stated that the topics were broad.

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SENATOR SHOWER joined the meeting.

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SENATOR KIEHL referred to page 1, which outlines the demonstration state-tribal education compact with federally recognized tribes and tribal organizations. He asked for clarification on tribal organizations.

MR. LAMKIN explained that the prior committee indicated that might be instances where a consortium or group of tribes would collectively deliver health or other services. In those instances, the federally recognized tribe may consider negotiating and including a tribally-empowered organization, such as Southeast Alaska Regional Health Consortium (SEARHC). He reiterated that a state-tribal education compact has many legal and judicial considerations. This bill doesn't put into place any of these changes. Still, it would allow the Board of

Education and Early Development (the board) and federally recognized tribes or organizations to negotiate and discuss the state-tribal education compact.

1:44:31 PM

SENATOR KIEHL offered his view that a consortium would make sense. He recalled that congressional intent arose in some legal challenges with COVID-19. He asked whether Native or village corporations would be included in the list of tribal organizations.

MR. LAMKIN stated the sponsor's intent was not to include corporations; however, corporations could participate in negotiations with the Board on the structure of the model. Although this language does not preclude them, corporations would not likely be part of the final model.

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SENATOR SHOWER pointed out the legal memo in member's packets [memo dated February 21, 2022, from Marie Marx, Legislative Counsel] highlighted some constitutional challenges. He asked if a state-tribal education compact school was established close to the road system, and it excluded non-Native students or non-Native teachers, whether legal challenges would ensue. For example, suppose a state-tribal education compact school was established near Glennallen, but it excluded 30 non-Native students or non-Native teachers.

SENATOR STEVENS responded that the intention is not to exclude anyone. He stated that he has eight villages in his district but only one school. If these villages chose to create a state-tribal education compact tribal school, it would not exclude non-Native students. One solution might be the use of a charter school. He pointed out that Anchorage has a Native language charter school, so this proposal would not be the first school to offer Native languages. He surmised that the charter school would need to be amended for Native charter schools.

MR. LAMKIN highlighted that an earlier version of SB 34 touched on preferential enrollment and employment, which were key flags that were identified. The sponsor has backed off from that language since it raised some potential constitutional challenges. At this time, SB 34 only allows federally recognized tribes to negotiate terms with the Board. It does not commit the state to any priorities or preferences. The Alaska Constitution requires the legislature to provide equal access to every child in the state.

[1:49:11 PM](#)

SENATOR STEVENS related that everyone had been frustrated with scoring, especially since rural Alaskans do worse than urban students. The legislature tries to find ways to help improve the educational system for students throughout the state. This bill may be one of the answers.

[1:49:33 PM](#)

SENATOR SHOWER acknowledged that Alaska's education system allows for flexibility. He asked whether NEA-Alaska had expressed any resistance.

SENATOR STEVENS answered that he had not heard any organized resistance. He said the idea was to improved performance for rural Alaskan students. He stated that the state-tribal education compact schools would be state schools funded by the state. These schools would fall under the local school district and the Department of Education and Early Development (DEED).

[1:51:31 PM](#)

SENATOR HUGHES offered her view that there is excellent potential for ownership by tribes to help ensure their students have academic achievement. She related that she had lived in rural Alaska and could see how this could be effective. Further, she stated that the Senate Education Committee held eight hearings on this bill. She asked from a legal perspective how the compact might work. She anticipated that the state-tribal education compact would be a legal document with specific requirements. She wondered what would happen if the compact requirements were not fulfilled.

[1:52:41 PM](#)

SENATOR STEVENS deferred to others to respond to legal question He explained that he has held discussions with the Alaska Federation of Natives (AFN), villages and the department to gain their perspectives on state-tribal education compacting.

MR. LAMKIN stated that this bill would direct the board to negotiate a contract, and the contract terms will include numerous things. He related that the sponsor modeled the original bill after a Washington state compact, but initially considered charter school modeling. He offered his view that the board and DEED have a general idea for a starting point. He said it would undoubtedly include curriculum, assessment, and collective bargaining.

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CHAIR HOLLAND summarized the timeline in SB 34 [listed in subsections (b), (c), and (d)], which requires that a federally recognized tribe must respond to the board on or before December 31, 2022. Further, not later than March 31, 2023, the board shall meet and negotiate with the federally recognized tribes. Finally, not later than January 31, 2024, the parties must submit recommended legislation. He offered his view that timeline should allow parties to answer some of these questions.

SENATOR STEVENS agreed. He reiterated that the original approach was to rush in and create state-tribal education compacted schools. However, the worst thing to happen would be creating schools and having them fail. He stated that this bill would provide sufficient planning time to ensure success for any schools formed.

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SENATOR SHOWER asked whether he envisioned any federal funding that would replace Undesignated General Fund (UGF) monies.

MR. LAMKIN responded that it was too early to say. He stated that state funds would help leverage federal funding. He did not anticipate that there would be any financial burden on Alaska to fund state-tribal education compacted schools.

SENATOR SHOWER recalled during discussions with Ms. Kitka that some federal funds could be available.

SENATOR STEVENS emphasized that this will not require less state funding, but it recognizes that rural communities have specific educational issues to address. This bill would allow additional funding to help student achievement but not reduce state support.

[1:57:27 PM](#)

JULIE KITKA, President, Alaska Federation of Natives, Anchorage, Alaska, stated that she serves as the Alaska Federation of Natives president.

[1:57:57 PM](#)

CHAIR HOLLAND asked for her comments on SB 34.

[1:58:11 PM](#)

MS. KITKA responded that the state-tribal education compact bill is to move forward with transformational education, supporting and incentivizing innovation and doing things better. She

explained this is not about tearing things down but building something better. AFN supports the two-step process, in which the state board, commissioner, and DEED negotiate on the state's behalf with tribes is the important signal it gives to other parties. In particular, the AFN requested the US Senate Indian Affairs Committee hold an oversight hearing, and they have subsequently held one hearing. Further, AFN asked the Secretary of the US Department of Education (USDoE) to help support this innovation and transformative education for compacting and other initiatives with that department and the US Department of the Interior (USDoI) related to funding. In addition, AFN and US Senator Lisa Murkowski await a solicitor's opinion from the USDoI on the ability to use flow-through funding on compacting for schools. Once that occurs, it will help inform the different paths on the federal side. She characterized the demonstrations as hybrids. She said they will have a federal component to help support teacher preparation, curriculum, and upgrading facilities. She noted that the Alaska educational system is not working for many rural Alaska students.

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MS. KITKA stated that the state-tribal compacting model for the Bureau of Indian Affairs and the Indian Health Service provides an effective funding mechanism to stretch funding. She noted that there is not a lot of compacting in the state, only the Alaska Tribal Child Welfare Compact. She stated that AFN would like to see this model used in education. She assured members that AFN does not want to overturn the educational system in the state but to engage in negotiations with tribes and the department.

MS. KITKA stated that the legislature would determine if any state laws would need a waiver or improvements. For example, former US Attorney General William Barr traveled to villages regarding rural law enforcement, then declared a public safety emergency based on his observations. US Attorney General Barr discussed using the legal authority to compact for public safety. She highlighted other uses of that compacting model that could be used to make improvements. She emphasized that the state-tribal education compact wouldn't just teach about Native culture but would teach through that culture to obtain deep ownership by the community and tribal membership. She stated that AFN strongly believes that parents are the first educators, but the community is vitally important for education success. She said, "It can't just be a school sitting on the hill away from the community."

[2:03:40 PM](#)

RICK AGNEW, Legal Counsel, Alaska Federation of Natives, Federal Way, Washington, stated he was available to answer questions. He said he agrees with Ms. Kitka on the policy questions.

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JOEL ISAAK, Tribal Liaison Project Coordinator, Department of Education and Early Development (DEED), Juneau, Alaska, said the department has been working on the Alaska Education Challenge since 2016, and adopted the state Board of Education and Early Development's recommendations. Since then, the board has created a compacting committee to review the regulatory overview and the types of support the department should consider. He highlighted that the department had had substantial tribal engagement. He defined compacting as a government-to-government agreement, one that is a dynamic, flexible, and powerful mechanism because of significant discussions and due to the wide geographical spread. He noted that compacting has been successful in healthcare in Alaska and in Washington state for education.

MR. ISAAK explained that SB 34 would allow the tribes to lead and be involved in developing the legal framework for the education compact in Alaska. He indicated that the Board of Education and Early Development is tasked by the legislature and the Alaska Constitution to oversee and conduct education. The department favors a demonstration project because it is a focused effort. This demonstration will focus on the technical and mechanical aspects that help student outcomes, including parental involvement and increased student attendance. SB 34 would give them time to consider and address the complicated questions and develop a well-thought-out proposal.

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SENATOR HUGHES asked for the difference between a compact and a contract.

MR. AGNEW answered that the compact is a government-to-government agreement with the parties on equal footing, which contrasts with a contract, in which the agency issues the contract and the school is subject to the contract. Thus, under a contract, schools would not be on equal footing. He emphasized the importance for tribes to be on equal footing, which is why change can be embedded in compact terms. He noted that the federal government often uses compacts. One advantage is to consolidate funds. The federal government is notorious for having single-purpose grants. Compacts allow different agency funds to educate children, whereas contracts are subject to the

program's limitations. He reiterated that compacts put the parties on an equal footing and allow them to consolidate and leverage money for education.

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SENATOR HUGHES noted that Mr. Isaak stated that the compact would be dynamic and flexible. She asked whether the compact could change along the way or once it was negotiated, it would represent the planned agreement. She asked what state and federal issues would need to be addressed.

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MR. AGNEW said the state-tribal education compact would be subject to federal and state constitutional requirements because the federally recognized tribes will operate in conjunction with federal law. As Ms. Kitka mentioned, the state would want to leverage federal funds to avoid a supplanting problem. In terms of the constitutional issues related to the governance and operation of the school, the state-tribal education compact is subject to state and federal constitutional prohibitions on discrimination, and the stated goal is not to exclude non-Native students. He opined that it is possible to meet the compelling state interest tests in constitutional law. He stated that the parties will design and agree to a compact, which is an agreement between the state and federally recognized tribes and tribal organizations. Thus, if an annual review or semi-annual review is embedded in the state-tribal education compact, it will be fully enforceable because both parties agreed to it.

MR. AGNEW stated that the sponsors of SB 34 [and HB 351, the companion bill] indicated the need for a flexible agreement, so if the demonstration project were to fail, there would be a quick way to remedy it.

MR. AGNEW highlighted one of the key ideas, to institute a demonstration project and continuously monitor how well it works because it is transformative. So as a matter of law, the parties to the state-tribal education compact could agree on checks for maintaining the program and assessing whether the program meets the quality standard. Suppose the parties decided to terminate the compact after a probationary period of six months or some other timeframe. In that case, several mechanisms would enforce the termination, such as withholding school operating funds or the state-sanctioned educational programs. Thus, the state Board of Education and Early Development and the federally recognized tribes and tribal organizations in the state will build into the

demonstration state-tribal educational compact the enforcement mechanisms.

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SENATOR KIEHL said he was surprised that the department worked on the state-tribal education compacting for several years. He has been working with a tribal entity and village in his district, striving to develop a new model for their school. Although they have reached out to the department, no one has responded to them. He recalled that Ms. Kitka mentioned a consortium. He asked if she could share her vision for the state-tribal education compact negotiation process and how broad a group of tribes or tribal entities would be. He further asked if she envisioned that a single statewide consortium would run multiple sites or if one tribe would conduct the demonstration project.

2:16:00 PM

MS. KITKA anticipated that the pieces would come together once the solicitor issued an opinion. It will clarify the flow-through funding for compact schools and the appropriation process for the US Departments of Interior and Education. She envisioned private sector and corporate funding sources would come from those supporting innovation in education in the state. She imagined that some innovative measures would be included in some compact schools. Other innovative approaches could be included in other compact schools since AFN supports innovative education for all students, not just one group.

2:16:51 PM

MS. KITKA emphasized testing the model to determine if the compact was helpful to address education in rural Alaska.

MS. KITKA envisioned an interregional consortium consisting of small, remote villages, for example, combining Kawerak in the Nome region with a village in Bristol Bay. She outlined the various models for compacting, including a statewide consortium, regional consortiums, and intertribal consortiums. She highlighted that the Tribal Health Consortium represents all the tribes in the state, with one entity negotiating on behalf of all the tribes. In addition, regional compacts, including Tlingit and Haida in Southeast Alaska, Kawarek, Incorporated (Kawarek, Inc.) in Nome, or Tanana Chiefs Conference (TCC) in Interior Alaska, negotiate on behalf of their specific tribes, and intertribal consortiums are formed to address specific topics. She pointed out that the Association of Village Council Presidents (AVCP), Kawarek, Inc., and TCC might work together on

an issue, or a single-site might negotiate on compacts for various programs.

MS. KITKA suggested that the state-tribal education compact would be formed as a small interregional consortium, working with the state Board of Education and Early Development because of the interest in different regions. She acknowledged that this is limited to a demonstration project that needs development, but it represents a step forward. She explained that all federally-funded or state-funded compacts are subject to financial and program audits, providing accountability and responsibility. She recapped that SB 34 would allow the state and tribal entities to create a new model and test it to see if it will work in Alaska to improve outcomes. She surmised the state-tribal education compact would be driven by innovation that can be incentivized to provide a better educational model for some children.

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SENATOR SHOWER stated that the legislature would like to save money yet focus on providing a good education for students in the classroom with the same 54 school districts and avoid overlapping administrative costs for services such as IT or superintendents. The legislature has considered forcing districts to consolidate, noting that some districts have consolidated services already. He pointed out that Hawaii [State Department of Education] has a single, statewide school district serving seven islands [approximately 285,000 students].

SENATOR SHOWER asked whether AFN has considered whether compacted schools would fall under the state's existing school districts or if it would create a separate district. Hence, tribal entities would have more control, which would require additional administrative support.

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MS. KITKA responded that was something that would be negotiated with the state Board of Education and Early Development when developing the state-tribal education compact. She surmised that the state board would decide. Regarding cost savings in rural Alaska on education, the best thing would be for the state to help remove the prohibition on federal funding for facilities. She related that a rider has been in place since about 1997 prohibiting federal appropriations from helping rebuild or refurbish schools. She stated that AFN had requested the Senate Indian Affairs Committee eliminate the rider. She offered her belief that if it was removed, the state could access

infrastructure funds designated explicitly for school facilities. She admitted that AFN does not have all the answers, but AFN worked with the commissioner, the Tribal Liaison Project Coordinator, and the state Board on these issues. AFN has also been working with the US Senate Indian Affairs Committee, emphasizing the need to support and incentivize innovation and make improvements and reminding the federal government of their federal trust responsibility on education.

[2:23:04 PM](#)

MS. KITKA wondered if state-tribal entities could improve education in rural Alaska so that resources could be stretched further or provided more efficiently. Ultimately the test will be how well students perform and whether the commissioner and the state board agree that state-tribal education compacting is a winning model. She stated that AFN doesn't want to turn the system upside down but would like to push the edges and use innovation to achieve better outcomes.

[2:23:43 PM](#)

SENATOR SHOWER agreed that pursuing the rider was a valid path to follow. He reiterated his desire to consolidate districts to control costs. He suggested that the compacted schools be contained within the existing school district structure or having them all fall under one district, perhaps bringing in other districts.

[2:24:18 PM](#)

SENATOR KIEHL stated that the bill calls for the tribal organization or consortium to work with the department. The department represents the state executive branch, but schools statewide are operated by locally elected school boards in the state. He asked whether the negotiation process would allow local school districts to collaborate and understand the impacts on their enrollment and take advantage of any opportunities and mitigate potential harms.

MR. ISAAK offered his view that one of the strengths of the bill is allowing those conversations to occur and for districts to examine how compacts would affect them. He related that the Senate Education Committee held discussions on efficiency. He stated that tribes have already figured out ways to deliver services by working together to solve problems, creating efficiencies by sharing costs and services, and having the funds flow to the tribes. He characterized the compact as an engine for addressing solutions and suggested that a compact school might address a need that a non-compact school district hasn't

solved because the compacted school can focus its energy and expertise on the obstacle. Although this bill relates to a small-scale demonstration project, the solutions could have far-reaching effects.

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MR. ISAAK turned to the topic of increasing efficiency. He offered his view that tribes can apply for transportation funds and may have a more efficient way of transporting pupils than the district currently does because they have the infrastructure. He suggested that the most effective compact will engage with the local school district to take advantage of any efficiencies to provide services more economically and closer to home.

MR. ISAAK stated that the state-tribal education compact process would identify questions. He acknowledged that he could not project how many students might be enrolled in one school versus another school two or three years from now, but the process can review the demonstration projects and project the number of students the schools will serve. He said one of the strengths of the demonstration project is that it provides an interim step that can give a more definitive view of the compact schools.

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MS. KITKA related that the compact model is not new. The US government engages in numerous successful compacts with Pacific Island nations and the Millennium Challenge Corporation's five-year compacts with low-income countries. For example, the US has had a compact with Mongolia for ten years, building railroads. She highlighted that compacts work with large countries, island nations, and Native Americans.

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SENATOR KIEHL acknowledged that Mr. Isaak pointed out opportunities, and he agreed with the potential benefits. He expressed concern that the bill does not put specific responsibility on any party, nor does it make local school districts party to the state-tribal education compact. He offered his belief that if school districts are not involved during the negotiation and design process, they will attempt to stop the process because districts will be concerned about how the state-tribal education compact will affect them. He asked who will involve the districts and when they will become involved.

MR. ISAAK responded that the conversations have been about a state-tribal education compact. The negotiations taking place are between the state and the federally recognized tribes. He stated that school districts have ample opportunities to be involved because it is a public process. For example, the state Board of Education and Early Development meetings are publicly noticed and allow public comment. The department developed a webpage specifically for tribal compacting, including an overview and contact information, allowing for public comment. He said he made presentations to the Association of Alaska School Boards, Alaska Superintendents Association (ASA), and NEA-Alaska. He co-hosted with NEA Alaska at the First Alaskan Institute of Elders & Youth Conference. He offered his belief that the department has clear lines of association with those organizations to ensure opportunities for input.

2:33:54 PM

MR. ISAAK highlighted that some superintendents have reached out because their local school board expressed an interest in a state-tribal education compact. However, there is not currently a path to do so. In those instances, he met with the tribes, the superintendents, and the school boards to consider what the compacted schools would look like in their communities and receive feedback. Although he has not met with every tribe expressing an interest through their school boards in Alaska, he has had some discussions. He noted that state-tribal education compacts do not provide more teachers, so there will be a need for excellent educators in compact schools. Further, the department has given presentations at educational conferences throughout the last five years to be publicly available in the venues and locations that educational professionals attend.

MR. ISAAK emphasized this as the department's strategy and how this bill would continue to support that engagement.

2:35:47 PM

MS. KITKA emphasized that AFN would not be opposed to local school boards attending state-tribal education compact meetings. She did not view these negotiations as adversarial. Instead, AFN seeks common ground to move forward. The state-tribal education compact negotiations are not secret. She welcomed school board members, superintendents, and teachers to attend and provide their input and expertise. She said AFN seeks to build a win-win situation and proactively plans to contact parents to inform them about the state-tribal education compact and its potential effect on students.

2:37:23 PM

SENATOR HUGHES asked whether any federal funding streams currently available to tribes for education require state match and if money from the Base Student Allocation (BSA) could be used. She recalled earlier testimony that state-tribal education compacts should not require additional cost to the state.

MS. KITKA answered that AFN was still working out those revenue streams and not trying to compete with other tribes across the nation for funds for their schools or programs. AFN seeks to reprogram additional funds and create new streams of revenue. And the only thing that may concern the other tribes would be removing the prohibition against facilities money coming into Alaska. She said she did not anticipate the necessity for matching funds. She offered her view that if the federal government required matching funds, it should be related to an excellent federal program that drives innovation for everybody, not just compact schools.

2:38:10 PM

SENATOR HUGHES stated her appreciation that the sponsor moved away from the Washington model that would have given preference to Alaska Native children in the villages. She explained that the Alaska Native Health Tribal Consortium providers welcomed non-Natives patients.

SENATOR HUGHES recalled years ago, when her family lived in Fort Yukon in rural Alaska, the tribal clinics did not accept non-Native patients. Her family needed to fly to Anchorage or Fairbanks for medical treatment. Subsequently, tribal clinics incorporated the health center model, and to receive funding, the clinics had to accept all patients. She wondered if the Washington model would create any constitutional issues. She recalled that the original bill would have established a preference for Alaska Native teachers and students. She said she could see where that might be more effective to have a tribal perspective. She wondered if that would raise constitutional issues or if it could be handled via the job description to avoid the constitutional problems.

2:39:45 PM

MR. AGNEW responded that there would not be a bar against hiring Alaska Native teachers. However, establishing a preference for hiring teachers must meet a compelling state interest to pass constitutional muster. In this case, the educational program could easily be considered a compelling state interest. He cautioned against creating a blanket ban for Native or non-

Native teachers because it could raise some constitutional challenges but creating a preference tailored specifically to the quality of the education program would likely be acceptable since it would be a legitimate qualification for employment for teachers. If so, that would likely pass constitutional muster because it would establish a narrowly defined educational program.

2:41:21 PM

SENATOR HUGHES stated that currently, school districts must adhere to numerous state laws. She said the legislature is currently considering a bill related to reading intervention programs. She asked whether he envisioned tribal schools would have to comply with all state laws or if the compacting agreement could suspend or waive specific laws. She surmised that the commissioner would not have the authority to do so, but the legislature could authorize it.

MS. KITKA replied that when the report and negotiated compact come before the legislature, tribal entities could request waivers for any laws or regulations they identified as not applicable to state-tribal education compacted schools. The legislature can debate the pros and cons of any waivers as the legislation moves through the process. However, AFN has not identified any, and she did not envision a large-scale exemption from state law. Some laws may need to be modified, but she did not believe that radical changes would be necessary.

2:43:20 PM

CHAIR HOLLAND invited the sponsor to the presenter's table and Senator Stevens and Mr. Lamkin came forward.

2:43:32 PM

SENATOR KIEHL stated that this bill provides a fairly short timeframe to develop a proposal for the legislature to consider, but he envisioned it was doable. However, it gives the legislature five years to put this into place.

SENATOR STEVENS first provided some general comments. He explained that the bill was much different when the Senate Education Committee held discussions on it. At that time, he had envisioned that the state would create many new compacted schools, but he realized that was too ambitious, so this version made limited changes. He offered his view that much of today's discussion falls outside the bill's scope since those considerations will be determined after the state and federally

recognized tribal entities negotiate. He agreed that the bill probably gives the legislature too much time.

[2:44:52 PM](#)

SENATOR STEVENS said he likes the charter school system. If he were negotiating a state-tribal education compact, he would encourage using the charter school model because charter schools fall under school districts. The districts control the charter schools, and they are a part of every school district.

SENATOR STEVENS pointed out that the bill says that the state needs to go to the next step, but it doesn't provide an answer. It creates the setting for the state and federally recognized tribes to find solutions. He stated that this process should involve everyone, and as Ms. Kitka eluded, the negotiations should identify common ground. He emphasized her comment about not teaching Alaska Native culture but teaching through the Alaska Native culture, which is considerably different. He offered his belief that it could be transformative.

[2:45:41 PM](#)

SENATOR STEVENS cautioned members that the committee was getting "in the weeds." He offered his belief that the state and federally recognized tribes would answer these concerns during the negotiating process to develop the compact. He highlighted that the Department of Education and Early Development would participate, and no one would be excluded. He said he likes that school districts that want to participate are welcome to do so. He stated that the goal of the state-tribal education compact is to develop a model. He emphasized that this bill is the first step in the process. The negotiated compact should answer some questions members asked.

[2:46:23 PM](#)

MR. LAMKIN emphasized that the SB 34 plans for the compact to have a duration of five years. He said the five-year sunset was to allow the legislature and the administration sufficient time to assess how compacted schools were functioning and whether to continue them.

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SENATOR KIEHL asked whether five years was a long enough timeframe to determine if the pilot program was working and needed to be made permanent or if it should sunset. He related his understanding that once the compact is negotiated and questions are answered, the compact would be capped at five years. The legislature would have to act to extend it, so

compacted schools would operate for four years. He expressed concern about whether that timeframe was sufficient to decide if the new system was working and for the legislature to say, "Yes, let's keep doing it."

SENATOR STEVENS offered his view that it was sufficient time because DEED started considering state-tribal education compacts with the Alaska Education Challenge approximately four years ago. He suggested that once the state and federally recognized tribes negotiate, they come up with a recommendation.

[2:48:38 PM](#)

MR. LAMKIN stated that the Department of Education and Early Development (DEED) and AFN had indicated the five-year timeframe was reasonable. He pointed out that it was not uncommon for boards and commissions to have a sunset ranging from four to eight years.

CHAIR HOLLAND related his understanding that he was referring to the timeline for the program to prove itself. After holding conversations with the stakeholders, he plans to propose the date for the legislature to approve enabling legislation to be changed from January 31, 2029, to June 30, 2026. He anticipated discussing that at the next meeting. He noted that he still feels a little uncomfortable with the bill. Still, he will try to get more comfortable because the intent of SB 34 is to resolve many of the questions pertaining to organizing the compact.

[2:50:31 PM](#)

CHAIR HOLLAND held SB 34 in committee.

[2:50:45 PM](#)

There being no further business to come before the committee, Chair Holland adjourned the Senate Judiciary Standing Committee meeting at 2:50 p.m.